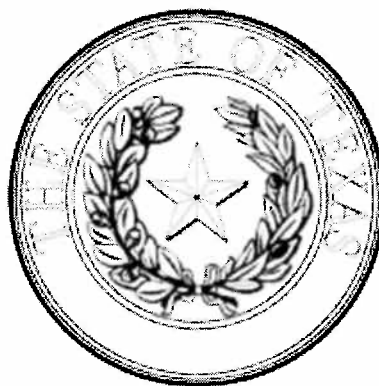


Office of Public Utility Counsel Annual Report for Fiscal Year 2011



For the

Senate Business and Commerce Committee

Senate Finance Committee

Senate Natural Resources

House State Affairs Committee

House Appropriations Committee

January 2012



Office of Public Utility Counsel

P.O. Box 12397
Austin, Texas 78711-2397
(Tel.) 512/936-7500 (Fax) 512/936-7525
Toll Free: (877) 839-0363

Sheri Givens
Public Counsel

January 30, 2012

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *2011 Annual Report* as required by the Public Utility Regulatory Act Section 13.063. This report provides you and your staff a look at our agency's representation of residential and small business electric and telephone customers during 2011. Below is a snapshot of our accomplishments this past year:

- OPUC achieved \$367 million in bill savings through consumer representation in 43 contested cases and appeals during Fiscal Year 2011;
- OPUC advocated in 30 electric and telephone rulemakings ensuring certain customer protections were in place;
- OPUC conducted twenty-two outreach events visiting communities across Texas;
- OPUC established ongoing military-specific outreach programs and materials, addressing concerns expressed at the agency's 2010 annual meeting;
- OPUC initiated outreach efforts with small business stakeholder groups to better represent and assist this constituency;
- OPUC has coordinated with other agencies on important issues such as weather events affecting electric customers, energy efficiency, and federal regulations impacting the state;
- OPUC utilized social media and email alerts to timely provide pertinent customer information and produced quarterly e-newsletters, customizing for targeted constituencies when requested; and
- OPUC addressed inquiries and complaints from over 300 Texans and continues to assist customers with their utility issues.

As required by statute, the report provides an overview of our office's types of activities, the time spent on each activity, the number of hours billed for representing consumers in proceedings, the number of staff positions and type of work performed by each, and the office's rate of success in appeals. In addition to highlighting some of the contested cases and rulemakings, the report summarizes OPUC's contributions at the Electric Reliability Council of Texas (ERCOT), provides information on OPUC's extensive customer outreach and stakeholder coordination, and provides a snapshot of legislative activities during the Eighty-Second Legislative Session.

OPUC appreciates this opportunity to provide you and your staff with information about our consumer advocacy. If you have any questions about any issues addressed in this report, please contact my office.

Sincerely,

A handwritten signature in black ink that reads "Sheri Givens".

Sheri Givens
Public Counsel

ACKNOWLEDGEMENTS

**Office of Public Utility Counsel
Sheri Givens, Public Counsel
Laurie Barker, Litigation Director and General Counsel
Danny Bivens, Director of Market Representation**

**Project Team
Michele Gregg
Sara Ferris
Brad Temple**

*In addition, special thanks to other OPUC Staff members who contributed to the preparation of
this report:*

**Janalee Paiz
Melissa Silguero**

2011 OPUC Annual Report
Table of Contents

Chapter 1. Overview	1
A. OPUC Activities	1
B. OPUC Hours Billed	2
C. OPUC Staff Positions and Type of Work Performed	3
 Chapter 2. Summary of OPUC Activities for 2011	 5
A. Contested Proceedings	5
1. Electric	5
a. Traditional Rate Cases	5
b. Advanced Metering	6
2. Telecommunications	6
B. Rulemaking Activities and Projects	7
1. Electric	7
a. Transmission Line Certificates of Convenience and Necessity (CCNs) ...	7
b. Prepaid Electric Service	8
c. Expedited Customer Switching	9
d. Periodic Rate Adjustments	9
2. Telecommunications	10
a. Rulemakings to Implement 2011 Legislation	10
C. ERCOT Participation	11
1. ERCOT and Texas RE Board of Directors	12
2. ERCOT Technical Advisory Committee	12
3. 2011 Highlights	13
 Chapter 3. OPUC Outreach and Coordination With Other State Agencies	 14
A. Customer Outreach	14
1. Education and Information	14
2. Community Outreach Events	15
3. Military Outreach and Education	16
4. Outreach to Small Business Stakeholders	17
5. Annual Meeting	17
B. Coordination With Other Agencies and ERCOT	18
1. Energy Efficiency	18
2. 2011 Weather Events	19
3. Cross-State Air Pollution Rule (CSAPR)	19
 Chapter 4. 2011 Legislative Activities	 21
 Attachments	 23
A. OPUC Calculation of Bill Savings	
B. FY 2011 Cases and Projects in Which OPUC Participated	
C. FY 2011 OPUC Appeals Report	
D. OPUC Outreach Events and Educational Materials	
E. OPUC Letter to Environmental Protection Agency (EPA) on Cross-State Air Pollution Rule (CSAPR)	

Chapter 1. Overview

In 1983, the Office of Public Utility Counsel (OPUC or agency) was created as part of the 68th Legislature's Sunset Review of the Public Utility Commission (PUC or Commission). The agency was created in response to legislative and consumer concerns that residential and small business ratepayers were not being adequately represented in utility proceedings that ultimately affected them. Utility companies and large consumers had significant resources to aggressively present their positions. In contrast, residential and small business ratepayers generally did not have representation in matters coming before the PUC and other agencies, because they were individually unable to afford the cost of presenting full legal cases. The Legislature determined that this inequity created an imbalance in the regulatory process; therefore, OPUC was created to provide balance to the process.¹

By statute, OPUC is required to provide an annual report on the agency's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over OPUC.² The report must include:

- the types of activities conducted by OPUC and time spent by OPUC on each activity;
- the number of hours billed by OPUC representing residential or small commercial customers in proceedings;
- the number of staff positions and type of work performed by each position; and
- OPUC's rate of success in representing residential and small commercial customers in appealing Commission decisions.³

In addition, OPUC is authorized to recommend legislation to the Legislature that the agency determines would positively affect the interests of residential and small commercial customers.⁴ OPUC does not have recommendations for this report; however, there is an overview of the agency's legislative involvement for 2011 under *Chapter 4, 2011 Legislative Activities*.

A. OPUC Activities

The Public Utility Regulatory Act (PURA) charges OPUC with representing residential and small business consumers in proceedings affecting electric and telecommunications rates and services.⁵ OPUC represents these consumers at the PUC, as well as in both state and federal courts, at the Federal Communications Commission (FCC), and at the Federal Energy Regulatory Commission (FERC). Following are the types of activities conducted by OPUC in 2011:

- **Contested Cases and Appeals.** In contested cases and appeals, OPUC provides legal and technical comments, testimony, and proposals that benefit residential and small commercial

¹ For additional information relating to OPUC's history, please see OPUC's *Self-Evaluation Report*, September 2009, Section III, pp 16-28, at http://www.opc.state.tx.us/documents/OPUC_SER_FINAL.pdf?ID=90.

² Public Utility Regulatory Act (PURA) §13.063; Texas Utilities Code §13.063.

³ See Attachment C, *FY 2011 OPUC Appeals Report*.

⁴ PURA §13.003(a)(8).

⁵ Texas Utilities Code Annotated §§ 13.001 *et seq.* (or Public Utility Regulatory Act (PURA)).

customers and promote their interests. OPUC participated in 43 contested proceedings and appeals and helped consumers realize over \$366,997,243.68 million in bill savings during Fiscal Year (FY) 2011.⁶ For more information, see Chapter 2A, *Contested Proceedings*.

- **Rulemakings and Projects.** In rulemakings and projects, OPUC also provides legal and technical comments and proposals to benefit and promote its consumers' interests. OPUC participated in 30 projects in FY 2011, consisting of 20 electric and 10 telecommunications projects. For more information, see Chapter 2B, *Rulemaking Activities and Projects*.
- **ERCOT and Texas RE.** Additionally, OPUC is an active participant at the Electric Reliability Council of Texas (ERCOT), which is the Independent System Operator (ISO) for 75 percent of the Texas electric grid, and ERCOT committees and working groups. OPUC likewise participates at the Texas Reliability Entity (Texas RE), which is responsible for ensuring compliance with the North American Reliability Corporation (NERC) reliability standards within the geographic boundaries of the ERCOT region. Decisions made at regulatory agencies, ERCOT and Texas RE directly impact the price, offering, and reliability of utility services. OPUC represents the interests of residential and small business consumers when those decisions are being formed and made. For more information, see Chapter 2C, *ERCOT Participation*.
- **Outreach.** OPUC proactively seeks to bring value to its representation of residential and small business consumers by pursuing a variety of outreach opportunities to dialogue with customers about their specific needs and concerns. In 2011, OPUC participated in numerous community outreach events, received hundreds of phone calls via our agency toll-free telephone number, resolved hundreds of customer inquiries and complaints, initiated a quarterly agency newsletter, and continued utilization of social media, including Facebook and Twitter, to update consumers on relevant information. For more information, see Chapter 3A, *Customer Outreach*.

For a more comprehensive listing of all cases and projects OPUC participated in FY 2011, see Attachment A, *FY 2011 Cases and Projects in Which OPUC Participated*.⁷

B. OPUC Hours Billed

OPUC's workload is categorized by electric and telecommunications cases, projects, and appeals. In FY 2011, OPUC staff spent 10,528.0 hours on electric and telecommunications cases; 7,138.0 hours on electric and telecommunications projects; and 446.0 hours on appeals. Total OPUC staff hours in FY 2011 were 18,112.0.⁸

⁶ Attachment A, OPUC Calculation of Bill Savings.

⁷ PURA §13.063(b)(1) requires the OPUC Annual Report to include a list of the types of activities conducted by the office and the time spent by the office on each activity.

⁸ PURA §13.063(b)(2) requires the OPUC Annual Report to include the number of hours billed by the office for representing residential or small commercial customers in proceedings.

	Total Electric and Telecom Cases	Total Electric and Telecom Projects	Total Electric and Telecom Appeals	Total Electric and Telecom Hours
OPUC Staff Hours	10,528.0	7,138.0	446.0	18,112.0

During FY 2011, OPUC was involved in pending appeals relating to 7 PUC decisions.⁹

	FY 2009	FY 2010	FY 2011
Appeals in which OPUC participated	7	8	7

For a more comprehensive analysis of OPUC's appeals during FY 2011, see Attachment C, *FY 2011 OPUC Appeals Report*.

C. OPUC Staff Positions and Type of Work Performed

OPUC is headed by the Public Counsel, who is appointed by the Governor and confirmed by the Senate for a two-year term.¹⁰ The Public Counsel must be licensed to practice law in the state of Texas and must be a Texas resident.¹¹ The eighth and current Public Counsel is Sheri Givens, first appointed by Governor Rick Perry on December 21, 2009, and reappointed on February 11, 2011. She was confirmed by the Texas Senate during the 2011 legislative session.

The Public Counsel supervises the overall operations of the agency and establishes agency policy. Specifically, the Public Counsel is responsible for the agency budget, staff hiring and termination, agency policy and administration, and the selection of cases in which to intervene.

OPUC has a total number of 15 employees and consists of two main divisions, the Litigation Division and the Market Representation and Communications Division, and also includes a Business Manager, Government Relations Liaison and support staff.¹² This two-division structure was initiated in 2008 and has allowed OPUC to better deploy its professional, legal, and technical expertise within the appropriate regulatory or market venue.

- **Litigation.** The Litigation Division is responsible for representing the interests of residential and small business consumers in litigated matters before the PUC and other jurisdictional entities as necessary (*i.e.*, state and federal courts, FERC, FCC, etc.). Major regulatory matters include, but are not limited to, rate cases, fuel reconciliation and other fuel cases,

⁹ PURA §13.063(b)(4) requires the OPUC Annual Report to include the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

¹⁰ PURA §13.021.

¹¹ PURA §13.022.

¹² PURA §13.063(b)(3) requires the OPUC Annual Report to include the number of staff positions and the type of work performed by each position.

energy efficiency cost recovery factor cases, and advanced metering deployment and surcharge proceedings. In addition to the Director, who is an attorney, the Division also employs two additional attorneys and three regulatory analysts.

- **Market Representation and Communications.** The Market Representation and Communications Division is responsible for representing the interests of residential and small business consumers in non-litigated matters, rulemakings, and projects, and advocates for residential and small business consumers before the PUC, ERCOT, and other jurisdictional entities. Market Representation projects include, but are not limited to, customer protection, utility cost recovery, and retail electric provider rules; advanced metering matters; agency annual meetings and reports; customer complaint resolution; legislative bill review and analysis; and public communication, education, and outreach. In addition to the Director, the division also employs one attorney and one information specialist.
- **Business Manager, Government Relations Liaison, and Support Staff.** OPUC's Business Manager, Government Relations Liaison and 3 administrative support staff complete the 15 filled full-time positions. The Business Manager manages the budget and business activities, the Government Relations Liaison oversees government relations and related outreach activities; and the administrative support staff provides professional, legal, and clerical support for the agency.

Chapter 2. Summary of OPUC Activities for 2011

A. Contested Proceedings

For FY 2011, OPUC participated in 33 contested electric cases, 3 contested telecommunications cases, and 7 appeals. The agency reported \$366,997,243.68 of current year bill savings for residential and small commercial customers as a result of those proceedings. The agency participated in a variety of cases including traditional rate cases, the continued implementation of advanced metering, and energy efficiency cost recovery. For more information, see Attachment B, *FY 2011 Cases and Projects in Which OPUC Participated*.

1. Electric

The agency continues to experience an increase in participation in rate setting and rate recovery cases. A significant portion of the agency's resources have been devoted to establishing reasonable rates for integrated utilities in regulated areas, as well as unbundled transmission and distribution utilities in competitive areas. Electric utilities continue to propose novel rate recovery mechanisms in response to current economic conditions. Many of these mechanisms would allow the utility to recover significant costs in issue-specific proceedings, without first determining the utility's overall costs. For example, in FY 2011, the agency successfully opposed a request by a utility for a lost revenue adjustment mechanism (LRAM) which would guarantee a level of revenue for the utility under certain conditions, such as the implementation of energy efficiency programs, because this request was unrelated to actual expenses of the utility.¹³

The Legislature recently addressed the need for an alternative method of recovering certain distribution related investments for electric utilities.¹⁴ The resulting PUC rulemakings will be addressed in Section 2B, below. The agency still anticipates a significant number of traditional rate cases for the next fiscal year.

a. Traditional Rate Cases

A tremendous amount of the agency's resources are devoted to negotiating and litigating these massive rate cases. These rate cases typically involve issues relating to a company's return on equity, costs of service, taxes, affiliate transactions, cost allocation and rate design among diverse customer classes. Each issue might involve expert testimony from accountants, engineers, economists or industry experts. OPUC's efforts in negotiating and litigating these rate cases have resulted in lowering costs to residential and small business customers by approximately \$366,997,243.68 million.

¹³ PUC Docket No. 39363, *Application of CenterPoint Energy Houston Electric, LLC For Approval of an Adjustment to Its Energy Efficiency Cost Recovery Factor* (December 15, 2011).

¹⁴ Public Utility Regulatory Act (PURA), as amended by SB 1693, 82nd Legislature, Regular Session (2011).

b. Advanced Metering

In 2005, the Legislature amended the PURA to encourage the deployment of advanced metering systems (AMS).¹⁵ Since the passage of the advanced metering legislation, the PUC has approved deployment plans for all of the large investor owned utilities in ERCOT – Oncor, CenterPoint, American Electric Power (AEP) Texas North and Texas Central Companies, and most recently for Texas-New Mexico Power Company (TNMP).¹⁶ These companies are currently in the process of deploying approximately 6.5 million smart meters throughout their respective service territories.

The benefits of advanced metering, or smart meters, include improvement of grid reliability and electricity restoration; market-based demand response; enhancement in service for customers, including real-time tools for managing consumption of electricity; and reduction or elimination in prices for discretionary services, such as reconnection fees.

During FY 2011, the Commission approved TNMP's AMS deployment plan.¹⁷ As a result, advanced meters will be ubiquitously deployed throughout TNMP's service territories. In addition, the deployment will coincide with a comprehensive customer education program, and free in-home devices will be made available to eligible low-income customers. Additionally, TNMP's customers will see a significant reduction in their discretionary service charges over time. OPUC was a strong proponent of these value-added services.

2. Telecommunications

For FY 2011, OPUC participated in three telecommunications cases involving the implementation of changes related to the Texas High Cost Universal Service Plan (THCUSP), as a result of a related settlement proceeding.¹⁸ The PUC order, relating to the unanimous settlement agreement, provides that increases in basic residential rates as a result of each telecommunication utility's filing are offset by an additional 25 percent of the increase actually approved by the PUC. In FY 2011, OPUC participated in the three aforementioned telecommunications cases to ensure that all eligible low-income customers received the additional support agreed to by the parties and ordered by the PUC, and reviewed each utility's filing to make sure each had limited its requested increase to no more than the maximum amount

¹⁵ Public Utility Regulatory Act (PURA), as amended by HB 2129, 79th Legislature, Regular Session (2005), codified at PURA §39.107(h) and (i).

¹⁶ PUC Docket No. 35718, *Oncor Electric Delivery Company LLC's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for Advanced Metering System (AMS) Surcharge*, (September 29, 2009); PUC Docket No. 35639, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System* (December 22, 2008); PUC Docket No. 36928, *AEP Texas Central Company's and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges* (December 17, 2009).

¹⁷ PUC Docket No. 38306, *Texas New-Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment and AMS Surcharge* (July 11, 2011).

¹⁸ PUC Docket No. 34723, *Petition for Review of Monthly per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and Subst. R. 26.403* (April 25, 2008).

pursuant to that settlement agreement.¹⁹ Each application to change rates was approved by the PUC in December 2010.

B. Rulemaking Activities and Projects

For FY 2011, OPUC participated in 30 projects and rulemakings – 20 electric and 10 telecommunications. The agency participated in and advocated for its consumers in a variety of projects and rulemakings including those related to periodic rate adjustments, prepaid service, expedited customer switching procedures, and transmission line certificates of convenience and necessity. For more information, see Attachment B, *FY 2011 Cases and Projects in Which OPUC Participated*.

1. Electric

a. Transmission Line Certificates of Convenience and Necessity (CCNs)

In February 2011, the Commission opened PUC Project No. 39125 to address an issue that had arisen regarding transmission line CCNs, specifically the removing of a utility's obligation to indicate a Preferred Route when applying for a transmission line CCN.²⁰ The designation of a Preferred Route had often confused landowners who had based their decision on whether or not to participate in these types of proceedings based on this designation.

In March 2011, the PUC issued a Proposal for Publication.²¹ The proposed rule eliminated the use of the term "Preferred Route" and included clarifying language to make it clear to affected landowners that all routes were eligible for selection by the Commission. Similar clarification language was also proposed for the associated public notice forms and landowner informational brochures. OPUC filed comments supporting the proposed clarifications to the rule and associated documents, and reiterated the need for landowners impacted by these CCN proceedings to have a transparent process in place so they can make informed decisions about their participation in these proceedings.²² The rule was adopted in May 2011.²³

¹⁹ PUC Docket No. 38894, *AT&T Texas Application to Change Rates for Residential Local Exchange Telephone Service in PURA chapter 58 Regulated Exchanges* (December 22, 2010); PUC Docket No. 38899, *Windstream Communications Southwest Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 59 Regulated Exchanges* (December 6, 2010); and PUC Docket No. 38908, *GTE Southwest Inc. Application d/b/a Verizon Southwest TXG and TXC, to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges* (December 13, 2010).

²⁰ PUC Project No. 39125, *Rulemaking and Form Amendments for Electric Transmission Certificate of Convenience and Necessity Applications*.

²¹ PUC Project No. 39125, *Rulemaking and Form Amendments for Electric Transmission Certificate of Convenience and Necessity Applications*, Proposal for Publication (March 3, 2011).

²² PUC Project No. 39125, *Rulemaking and Form Amendments for Electric Transmission Certificate of Convenience and Necessity Applications*, Comments of the Office of Public Utility Counsel (March 31, 2011).

²³ PUC Project No. 39125, *Rulemaking and Form Amendments for Electric Transmission Certificate of Convenience and Necessity Applications*, Final Order (May 3, 2011).

In addition to the rulemaking regarding the elimination of the Preferred Route designation, the Commission also opened PUC Project No. 39518 in June 2011.²⁴ The proposed rule implements Senate Bill 855 which amended PURA §37.054 to include the requirement that OPUC receive notice when a CCN application is filed with the Commission.²⁵ Because Senate Bill 855 authorized OPUC to provide interested parties procedural guidance in transmission line CCN proceedings, the referenced rulemaking regarding OPUC notice allows the agency to better assist consumers in these proceedings. There were no comments filed opposing the proposed rulemaking, and it was adopted as proposed in November 2011.²⁶

b. Prepaid Electric Service

In September 2010, the Commission opened PUC Project No. 38675 to allow retail electric providers (REPs) that offer prepaid electric service to take advantage of the capabilities of advanced meters.²⁷ The advanced meters give REPs accurate data regarding how much electricity customers use in a more timely fashion than traditional meters, making prepaid service an attractive payment option for consumers.

In October 2010, the PUC issued a Proposal for Publication.²⁸ The proposed rule included provisions related to connection and reconnection charges and balances, appropriate disclosures regarding prices and terms to ease comparisons, and refunds of unused balances. OPUC filed comments and reply comments and was successful in minimizing various REP service charges, in lowering the minimum balance to \$10 before REP disconnection notices are sent, and in ensuring customer protections pertaining to price and term disclosure for consumers.²⁹ OPUC was also instrumental in requiring a notice to certain low-income customers that some energy assistance agencies may not support prepaid service. The rule was adopted in April 2011.³⁰ The Commission established a new project that same month to develop a standard form for prepaid disclosure in advertising and marketing before enrolling a customer on a prepaid product.³¹ The final rule and form was filed by the Commission on November 22, 2011.³²

²⁴ PUC Project No. 39518, *Rulemaking Relating to Implementation of SB 855, Amending Proc. R. §22.52, Relating to Notice in Licensing Proceedings*.

²⁵ Public Utility Regulatory Act (PURA), as amended by SB 855, 82nd Legislature, Regular Session (2011), codified as PURA §13.003(a)(9).

²⁶ PUC Project No. 39518, *Rulemaking Relating to Implementation of SB 855, Amending Proc. R. §22.52, Relating to Notice in Licensing Proceedings*, Final Order (November 1, 2011).

²⁷ PUC Project No. 38675, *Amendments to Customer Protection Rules Relating to Prepaid Service*.

²⁸ PUC Project No. 38675, *Amendments to Customer Protection Rules Relating to Prepaid Service*, Proposal for Publication (October 15, 2011).

²⁹ PUC Project No. 38675, *Amendments to Customer Protection Rules Relating to Prepaid Service*, Comments and Reply Comments of the Office of Public Utility Counsel (December 6, 2010 and December 13, 2010).

³⁰ PUC Project No. 38675, *Amendments to Customer Protection Rules Relating to Prepaid Service*, Final Order (April 27, 2011).

³¹ PUC Project No. 39357, *Project to Develop a Standard Form for the Prepaid Disclosure Statement*.

³² PUC Project No. 39357, *Project to Develop a Standard Form for the Prepaid Disclosure Statement*, Final Order (November 22, 2011).

c. Expedited Customer Switching

In September 2010, the Commission opened PUC Project No. 38674 to amend the customer protection rules related to advanced metering to facilitate same day switches and expedite connection, disconnection, and reconnection procedures.³³

The PUC issued a Proposal for Publication in May 2011.³⁴ While the majority of the proposed rule changes pertained to operational switch issues relating primarily to REPs and transmission and distribution service providers (TDSPs or wires companies), there were other provisions directly impacting customers and their rights when switching REPs. OPUC filed comments and reply comments and was successful in persuading the Commission to retain the right of rescission customer protection so that customers may continue to cancel a switch for up to three days after the switch was ordered without penalty.³⁵ The rule was adopted in November.³⁶

d. Periodic Rate Adjustments

In 2010, the Commission considered a rulemaking proposal to develop a mechanism to allow electric utilities that provide retail electric service using distribution facilities to apply for and update a distribution cost recovery factor (DCRF) to reflect changes in invested capital for their distribution facilities and associated costs.³⁷ Such a mechanism was considered by many, including OPUC, to be a significant departure from traditional ratemaking cost recovery principles. More specifically, the issue was whether the statute granted the PUC authority to adopt a rule or mechanism of this type. The rulemaking proposal was never adopted, and the PUC decided at its December 16, 2010 Open Meeting to allow this issue to be addressed by the 82nd Legislature.

The periodic rate adjustment, or DCRF issue, was addressed by the legislature through the passage of Senate Bill 1693, which grants the PUC the authority to allow utilities, once per year, to implement an increase in rates to reflect changes in additional distribution investment, distribution-related costs, and associated taxes.³⁸ In June 2011, the PUC opened PUC Project 39465 to implement Senate Bill 1693.³⁹

³³ PUC Project No. 38674, *Amendments to Customer Protection Rules Relating to Advanced Meters*.

³⁴ PUC Project No. 38674, *Amendments to Customer Protection Rules Relating to Advanced Meters*, Proposal for Publication (May 3, 2011).

³⁵ PUC Project No. 38674, *Amendments to Customer Protection Rules Relating to Advanced Meters*, Comments and Reply Comments of the Office of Public Utility Counsel (June 20, 2011 and July 1, 2011).

³⁶ PUC Project No. 38674, *Amendments to Customer Protection Rules Relating to Advanced Meters*, Final Order (November 10, 2011).

³⁷ PUC Project No. 38298, *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*.

³⁸ Public Utility Regulatory Act (PURA), as amended by SB 1693, 82nd Legislature, Regular Session (2011), codified as PURA §36.210.

³⁹ PUC Project No. 39465, *Rulemaking Relating to Periodic Rate Adjustments*.

The Commission issued a Proposal for Publication in July 2011.⁴⁰ The proposed rule addressed provisions necessary to implement new PURA §36.210 and provide for more timely recovery by electric utilities of capital and capital-related costs related to distribution infrastructure. Because the proposed DCRF mechanism allows for cost recovery outside of the traditional ratemaking paradigm, and because these cost increases ultimately flow to end-use consumers, OPUC filed comments and reply comments to highlight customer protections needed in the rulemaking.⁴¹ OPUC was successful in persuading the Commission to address many of the agency's concerns, including but not limited to, the adoption of an appropriate annual cost review and discovery process, an applicable accounting for the effect of utility load growth on revenues, and the recovery of only the discrete set of distribution-related costs envisioned by the statute. The final rule was approved in September 2011.⁴²

2. Telecommunications

a. Rulemakings to Implement 2011 Legislation

Several telecommunications-related bills were passed during the 82nd Legislature which required the Commission to establish rulemaking projects in the early fall of 2011 to implement the legislation. Activity in the referenced projects has been minimal to date, but OPUC has been engaged in the process with other interested parties to represent residential and small business concerns related to the rulemakings. A brief summary of the rulemakings follows:

- PUC Project No. 39585, *Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation*. While incumbent local exchange carriers (ILECs) have been deregulated since 1995, since that time, technology has changed. Consequently, many of the regulatory tools and requirements used to ensure competition are no longer needed. The 82nd Legislature recognized this and accordingly passed relevant legislation to eliminate outdated or unnecessary filing requirements, such as customer specific contracts, earnings reports, tariffs, and extended area services.⁴³ Commission Staff has termed this rulemaking a telecom “cleanup” project for conforming Commission rules to the law, and it is anticipated by all the parties involved to be relatively noncontroversial. A proposal for publication was filed in December 2011, and the anticipated final rule approval date is February 2012.⁴⁴
- PUC Project No. 39586, *Rulemaking Proceeding to Amend Subst. Rules Relating to the Texas High Cost Universal Service Plan, and Subst. Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan*. Senate Bill 980 requires the Commission to initiate one or more proceedings to review and evaluate whether the

⁴⁰ PUC Project No. 39465, *Rulemaking Relating to Periodic Rate Adjustments*, Proposal for Publication (July 11, 2011).

⁴¹ PUC Project No. 39465, *Rulemaking Relating to Periodic Rate Adjustments*, Comments and Reply Comments of the Office of Public Utility Counsel (August 8, 2011 and August 12, 2011).

⁴² PUC Project No. 39465, *Rulemaking Relating to Periodic Rate Adjustments*, Final Order (September 27, 2011).

⁴³ Public Utility Regulatory Act (PURA), as amended by SB 980, SB 983, HB 2293, and HB 2680, 82nd Legislature, Regular Session (2011).

⁴⁴ PUC Project No. 39585, *Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation*, Proposal for Publication (December 9, 2011).

Universal Service Fund (USF) accomplishes the fund's purposes or whether changes are necessary to accomplish those purposes.⁴⁵ As part of these proceedings, the Commission may adjust the per-line support amounts needed by each telecommunications provider and may implement any other changes that it determines are necessary and in the public interest. The PUC Staff was directed to move forward with the rulemaking and then conduct contested case proceedings to determine the new high cost support amounts. Accordingly, the Commission, acting on Staff's December 1, 2011 memorandum, approved the closing of the referenced rulemaking and the opening of four new projects at its December 8, 2011 Open Meeting as part of the Staff's work plan for implementing the legislative actions.⁴⁶ OPUC plans to actively participate in the new projects in 2012 to ensure that USF charges on consumers' bills are reasonable, necessary, and appropriate, and to ensure that the cost objectives in the legislation are appropriately captured in the PUC's rule.

- PUC Project No. 39717, *PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VoIP) Services and Texas Universal Service Fund (TUSF)*. The Federal Communications Commission (FCC) has extended federal universal service obligations to providers of interconnected VoIP services and has concluded that states could extend state USF assessments on the intrastate portion of interconnected VoIP. The scope of the rulemaking proceeding is anticipated to be limited to the clarification in the Commission's rules whether the TUSF assessment is applied to VoIP-based services. Pursuant to the Commission's discussion at the October 27, 2011 Open Meeting, the Commission is considering whether or how to apply the TUSF assessment to VoIP-based services.⁴⁷

C. ERCOT Participation

ERCOT is one of ten regional reliability councils in NERC, and the ERCOT ISO is the independent, not-for-profit organization responsible for the reliable transmission of electricity across Texas' interconnected, 37,000-mile power grid. ERCOT's primary role since 1970 has been to ensure the coordination of electricity transmission reliability and electric power transfers among NERC member organizations. Pursuant to Texas' deregulation of the wholesale generation market in 1995, and later with the creation of a competitive retail electricity market in 1999, ERCOT's role has expanded significantly. ERCOT now provides structure and oversight of the market design and activities of the energy market, including power scheduling, power operations, and retail market data transactions between retailers and wires companies.

⁴⁵ Public Utility Regulatory Act (PURA), as amended by SB 980, 82nd Legislature, Regular Session (2011).

⁴⁶ PUC Project No. 39936, *Report to the Legislature of the Commission's Findings and Orders Regarding its Review and Evaluation of the Texas Universal Service Fund*; PUC Project No. 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan*; PUC Project 39938, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan*; PUC Project No. 39939, *Rulemaking to Consider Amending Substantive Rule §26.420, Relating to Administration of the Texas Universal Service Plan Pursuant to PURA §56.023(d)*, Staff Memorandum (December 1, 2011).

⁴⁷ PUC Project No. 39717, *Rulemaking Proceeding Related to Voice Over Internet Protocol (VoIP) Services and Texas Universal Service Fund (TUSF)*, Public Utility Commission Open Meeting, October 27, 2011.

In addition, pursuant to the Energy Policy Act of 2005 (EPAAct), NERC mandated the creation of a regional entity to perform the functions described by EPAAct.⁴⁸ Accordingly, the Texas RE is authorized by NERC to develop, monitor, assess, and enforce compliance with NERC reliability standards within the geographic boundaries of the ERCOT region.

OPUC has been an active participant in the market design stakeholder process since the inception of electric restructuring, and continued to do so in 2011 by collaborating with the various market participants within the committee and sub-committee structure to bring value to the process on behalf of its constituents, residential and small commercial customers.

1. ERCOT and Texas RE Board of Directors

The agency's Public Counsel statutorily serves as a member of the ERCOT Board of Directors.⁴⁹ The ERCOT Board of Directors has monthly open meetings and consists of 15 members: independent members (unaffiliated with the power industry); consumers; and representatives from industry market segments.

The Public Counsel also serves as an ex-officio, non-voting member of the Texas RE Board which oversees the Texas RE's compliance and reliability oversight. The Texas RE's functions and protocol compliance were previously performed by the Texas *Regional* Entity, as a functionally independent division of ERCOT. The Texas *Reliability* Entity took over all responsibilities of the Texas *Regional* Entity on July 1, 2010 as the successor regional entity for the ERCOT region. The Texas RE is completely independent from ERCOT.

2. ERCOT Technical Advisory Committee

The Director of Market Representation serves as an ex-officio voting member of ERCOT's Technical Advisory Committee (TAC). Prior to December 2011, the Public Counsel also appointed a residential representative; however, now that the ERCOT residential segment has new additional members, those segment members vote for the residential representative who sits on TAC. TAC comprises market stakeholders and makes recommendations to the ERCOT Board of Directors. It is assisted by five subcommittees: Retail Market Subcommittee (RMS); Wholesale Market Subcommittee (WMS); Reliability and Operations Subcommittee (ROS); Commercial Operations Subcommittee (COPS); and Protocol Revisions Subcommittee (PRS). Consumers are represented on all committees, which meet monthly. Numerous task forces and working groups reporting to these major subcommittees also meet regularly. TAC makes recommendations to the Board regarding ERCOT policies and procedures and is responsible for prioritizing projects through the various stakeholder processes.

⁴⁸ Energy Policy Act of 2005 (EPAAct), Pub.L. No. 109-58, 119 STAT. 594, effective August 8, 2005.

⁴⁹ PURA §39.151(g)(2).

3. 2011 Highlights

ERCOT 2011 highlights having the most impact for OPUC's constituents include the following:

- **Nodal Market Design Transition.** As noted in OPUC's 2010 Annual Report, OPUC worked with wholesale market participants to facilitate the successful transition on December 1, 2010 from a zonal to a nodal market design. OPUC's Public Counsel, as an ERCOT Board Member, and OPUC's representatives on TAC have been engaged in all post "go-live" transition issues. The transition has occurred seamlessly with minimal transition-related issues, and consumers are benefitting from the increased market transparency and more efficient congestion management the new market design provides.
- **Resource Adequacy.** In the spring and summer of 2011, the Commission and ERCOT devoted a considerable amount of time to the issue of generation adequacy in the ERCOT market. PUC Project No. 37897, which was established in 2010 but relatively inactive until 2011, was created to address issues relating to the lack of investment in building new generation, declining generator revenues and reserve margins, the effect of reliability deployments on energy prices, system inefficiencies, and the impact of air pollution regulation on generation capacity and reliability.⁵⁰ During summer 2011, the Commission held a series of Commissioner-directed workshops to address these issues and provide a venue for ERCOT and market participants to work towards consensus solutions.⁵¹ Following the workshops, PUC Staff issued a series of questions for market participants' responses to provide additional direction for the Commission's guidance, which ERCOT and the stakeholders received at the October 27, 2011 Open Meeting. As an initial step to address the issue, the Commission directed ERCOT, through its stakeholder process, to implement price floors for two types of energy deployed for reliability purposes.⁵² The Commission's decision reflects their belief that the current deployment of non-spin resources has regularly caused a market price suppression which has acted as a disincentive to build new generation or keep existing generation available to the market in times of shortage or scarcity. This shortage of generation resources has caused emergencies during peak periods such as those seen in August and during the February cold weather event which resulted in rotating outages. OPUC is continuing to work with ERCOT and other market participants to implement the Commission's decision to ensure efficient market operations and continued reliability for Texas consumers.

⁵⁰ PUC Project No. 37897, *PUC Proceeding Relating to Resource and Reserve Adequacy and Shortage Pricing*.

⁵¹ PUC Project No. 37897, *PUC Proceeding Relating to Resource and Reserve Adequacy and Shortage Pricing*. June 22, 2011: Workshop-focus on the impact of proposed Environmental Protection Agency (EPA) emission rules on Texas generation and reserve margin; June 29-30, 2011: Workshop-focus on generation adequacy; August 22, 2011: focus workshop on the effect of reliability deployments, specifically ancillary services such as non-spinning reserve service (non-spin).

⁵² A price floor of \$120/MWh was established for "online" non-spin (non-spin generation that is operating but not serving load) and \$180/MWh for "offline" non-spin (non-spin generation that is not operating but can begin serving load within thirty minutes of dispatch).

Chapter 3. OPUC Outreach and Coordination With Other Agencies

A. Customer Outreach

1. Education and Information

*The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.*⁵³

OPUC, as the sole state agency tasked specifically with representing residential and small business utility consumers, is well positioned to inform, assist, and protect consumers with regards to issues and policies pertaining to and services available from telecommunications and electric utility providers. OPUC informs consumers with personalized, customer service catering to customers' specific needs and concerns, focusing on issues where informational gaps exist and where consumers are especially vulnerable.

- **Monthly Consumer Meetings.** OPUC hosts monthly meetings with consumer stakeholder groups and the PUC's Customer Protection Division to collaborate with interested parties regarding issues and projects in which the agency sees potential ratepayer impacts. This also provides a regular and consistent opportunity to keep abreast of the current concerns consumer stakeholders may have and coordinate with the PUC division charged with protecting customers.
- **Website and Social Media.** OPUC continues to improve its website, redesigned in 2010, to make OPUC's operations and information more transparent and available to the public. OPUC regularly updates and utilizes its website to ensure a more consumer-relevant and consumer-informative resource. Important information regarding communications, electric industry services and contact information, energy-saving guidelines, financial and critical/chronic care customer assistance, complaint-filing processes, and updates on regulatory and market developments impacting consumers are provided in an easy-to-navigate format. Information relating to PUC rule changes, legislation, and docketed proceedings affecting consumers are provided as additional resources that have been incorporated into the agency's website and issued as "Consumer Alerts," to which consumers can subscribe via email. The email alerts notify subscribers about a variety of information, from market changes that affect them such as retail electric provider consolidations to time-sensitive emergency information that was provided in plain language during the February rotating outage events. OPUC's website has had 16,146 visitors in 2011, of which 12,021 were unique or new visitors, and had 31,052 page views. In 2010, OPUC also began utilizing social media, including Facebook and Twitter, to update consumers on important information and continues to use these forums to keep ratepayers informed.
- **Newsletter.** Beginning in June 2010, OPUC launched a new education and information tool, an agency e-newsletter. Electric and telephone customers can sign up through the OPUC website to receive the quarterly letter via email. Each newsletter includes timely, consumer-

⁵³ PURA §13.061.

relevant information relating to PUC, ERCOT or Texas RE; customer protection; PUC rule changes; energy efficiency tips, programs, and assistance; low-income assistance; electric choice; legislative updates; smart meter deployment and education; and customer outreach event dates and contact information for event requests. OPUC began customizing seasonal e-newsletters for constituencies interested in providing information to a target group of customers or a targeted geographic area.

- **Complaints and Inquiries.** OPUC receives numerous complaints and inquiries each year, and 2011 was no exception. OPUC's professional staff members worked with customers to assist them to better understand and resolve the relevant issues and concerns they brought to the agency. Customer issues and inquiries included the following: billing and customer service; provision of service; disconnection and payment assistance; utility bill charges and unauthorized charges (cramming); and switching providers and unauthorized switching of providers (slamming). OPUC received and resolved a total of 349 complaints/inquiries in FY 2011, an increase of 44% over FY 2010. Of the complaints received, 87% came from residential ratepayers and 10% came from small business ratepayers. The remaining 3% of complaints came from other customer classes.

2. Community Outreach Events

OPUC has embarked on an aggressive community outreach plan to reach as many Texas customers as possible, educating them about a variety of issues pertaining to the competitive restructured market: shopping for a retail electric provider; PUC rule changes impacting customers; low-income and bill payment assistance; energy efficiency improvements and assistance; and smart meter deployment. In addition to the residential consumer events, OPUC has expanded its outreach to better serve its small business constituency. The agency is coordinating with groups representing these business owners to provide information on regulatory or legislative initiatives that affect these members, assist in resolving concerns these customers may have, and to provide informational articles that can be used in their publications to better inform these consumers how they can make changes to impact their bottom lines.

From December 2010 through December 2011, OPUC participated in approximately 23 community outreach events and forums, partnering with legislative offices and staff, city clubs, non-profit organizations, social service organizations, and market participants to inform and educate consumers and organizations.⁵⁴ OPUC used these outreach opportunities to establish a two-way dialogue with consumers. At these events, OPUC provides educational materials with community-specific assistance information, tips on shopping the retail electric market and step-by-step information on how to compare current electric plans with current offerings, information about the agency, and "customer cards," business cards imprinted with each method of contacting OPUC, including its toll-free number.

While Texas is a recognized leader in the electric market, OPUC's manner of representing residential and small business customers and its collaboration with stakeholders across the energy spectrum have given the agency increased national visibility. During 2011, the Public Counsel was asked to present OPUC's customer perspective on a range of issues from

⁵⁴ See Attachment D, *OPUC Outreach Events & Educational Materials*.

smart meters to energy efficiency to transmission expansion. At little or no expense to the agency, presentations were made before groups like the Public Utility Law Seminar, the General Land Office's Border Energy Forum, the Texas Energy Professionals Association (TEPA), the National Association of State Utility Consumer Advocates (NASUCA) and the National Association of Regulatory Utility Commissioners (NARUC). Accordingly, OPUC is gaining a reputation across the country as a positive force for Texas' customers by embracing advances in technology in the competitive market and harnessing its expertise to bring meaningful customer protections and ongoing benefits to residential and small business customers.

3. Military Outreach and Education

As a result of OPUC's 2010 annual meeting in Killeen, the agency has initiated targeted outreach and education in the military community. The transient nature of military personnel and their families means many in Texas' military communities have never encountered a competitive electric market. They are largely unaware of the benefits of the market, and are vulnerable to misinformation. Concerns over practices related to deployments and permanent change of station were raised in 2010 as well as lack of informational material about how to navigate the competitive market.

While there was a broad public education campaign following the restructuring of the Texas electric market in 2002, education has decreased since then. OPUC, as the agency representing residential and small business ratepayers, is attempting to increase customer education within its existing resources. Public comment at the Killeen annual meeting in December 2010 indicated a strong need for targeted education in Texas' military communities.

OPUC initiated meetings with Fort Hood Client Services in February 2011. The meeting generated additional meetings with Fort Hood's garrison command, public works division and public affairs division. Each division indicated that military personnel and their families were generally unfamiliar with the competitive electric market, intimidated by the complexities of market offerings, and vulnerable to misinformation. Since then OPUC has forged a relationship with the leadership at Fort Hood. The agency has addressed the Community Service Council, comprised of approximately 375 leaders across the various divisions and battalions on base. Coordination with the Financial Readiness Branch Manager, Director of Human Resources, and several Family Readiness Groups has been ongoing since August 2011.

OPUC has addressed numerous forums and developed several educational materials specific to our Texas military communities. Individual battalions have family readiness meetings to assist those whose loved ones are deployed or will be deploying, and the agency continues to be invited to address these groups about navigating the competitive market, handling changes related to their electric bills when their family member or roommate deploys, receiving a permanent change of station, and answering questions or assisting in resolving areas of concern. Plans are being made to provide a hands-on workshop in 2012, in conjunction with the Financial Readiness Branch, in support of the annual push to stabilize families' financial plans that the base coordinates. OPUC has developed a newsletter specific to Fort Hood and the communities that serve its personnel as well as a worksheet designed to assist residential ratepayers in evaluating their options within the competitive market as they shop for electricity.

Building upon its successful partnership with Fort Hood, OPUC contacted the Energy Manager at Goodfellow Air Force Base in November 2011, and plans are being made to forge a similar partnership there. The agency has also approached United Services Automobile Association (USAA), the financial institution based in San Antonio, Texas that serves military personnel and their families, to coordinate opportunities to reach a broader military audience across the state with minimal budgetary impacts to the agency. OPUC is working on partnering with military branches represented in Texas to broadcast educational resources through a variety of conduits to military communities in the state.

4. Outreach to Small Business Stakeholders

While the agency represents residential and small business customers, past outreach has generally focused on the residential constituency. In 2011, OPUC focused additional outreach efforts on stakeholder groups representing small business consumers. With much of the state's job creation occurring in this sector, the agency recognizes that many newcomers in the business community may have a disadvantage in navigating the competitive retail electric market. The agency initiated meetings with associations representing small business owners. Those associations are interested in further interaction with the agency to better serve the small business community and their utility needs. The agency is creating materials that these groups can use to advise their members on reducing the impact of electric costs to their business' overall operating budgets.

Another area in which OPUC is forging relationships to better serve small business consumers is with the electric professionals who work with these customers to purchase electricity in the competitive market. The agency is working with a trade association serving aggregators, brokers and consultants who work with businesses to plan for their energy needs and purchase at competitive rates.

5. Annual Meeting

The office shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers an opportunity to comment on the office's functions and effectiveness.⁵⁵

Since 2005, OPUC has held an annual meeting to engage residential and small business customers in formulating the goals, priorities, and functions of the agency. OPUC held its annual meeting in San Angelo, Texas on November 9, 2011.⁵⁶ The agency coordinated the event with State Representative Drew Darby and contacted statewide business associations to involve the agency's small business customers. The agency presented information on navigating the retail electric market, energy efficiency, assistance programs available to consumers and the agency's new role in advising landowners about procedural matters in transmission line proceedings. OPUC heard the area residents' concerns, including the need for customers to have

⁵⁵ PURA §13.064.

⁵⁶ Texas Register Notice, 36 Tex Reg 7040, *Office of Public Utility Counsel Notice of Annual Public Hearing*, (October 14, 2011).

electricity plans that provide a simple apples-to-apples comparison, guidelines for itemizing charges such as the fees attributed to transmission and distribution utilities (TDUs) on customers' bills, and extending the discount provided through the System Benefit Fund for low-income electric customers from the current May through September timeframe to year-round. The audience at the San Angelo meeting was varied, comprising consumers seeking information as well as community leaders such as city managers, air force base managers, faith-based service organization leaders, and county council of government leaders.

B. Coordination With Other Agencies and ERCOT

OPUC, as a small independent agency with limited resources, has found that coordination with other agencies adds value to representing its constituency and carrying out its statutory mission of representing the interests of residential and small commercial customers.⁵⁷ In addition to the many residential and small business stakeholders with which the agency coordinates, it also routinely works with a variety of other state agencies whose missions complement that of OPUC.

In 2011, the agency continued its working relationships with the Texas Commission on Environmental Quality (TCEQ), the General Land Office (GLO), the Texas Railroad Commission (TRC), the Comptroller's State Energy Conservation Office (SECO) and the Texas Department of Housing and Community Affairs (TDHCA) to address pertinent issues and seek additional information to supplement the agency's outreach and external communications.

1. Energy Efficiency

With numerous agencies administering a variety of energy efficiency programs for the state, OPUC, as the consumers' representative, spearheaded a collaboration of all agencies working on energy efficiency components to provide a comprehensive one-stop resource for Texas' customers.

In September 2010, OPUC initiated a state energy efficiency collaboration with the PUC, SECO, RRC, GLO and an organization called Texas Is Hot. The groups shared their roles in energy efficiency as well as their outreach information. OPUC compiled information from the various groups and launched an "Energy Efficiency" page on its website in December 2010. Follow up meetings with the agencies have continued through 2011 and now include TDHCA which administers the Weatherization Assistance Program (WAP) and the Comprehensive Energy Assistance Program (CEAP). OPUC's website now provides information about the energy efficiency programs offered by utilities as well as state agencies, provides contact information and links for the programs, and includes energy efficiency tips. In addition, the agency issues consumer alerts via email, Facebook, and Twitter regarding tax credits for energy efficiency products and other information about energy efficiency offerings and programs available in Texas.

⁵⁷ PURA §13.001.

2. 2011 Weather Events

In 2011, Texas saw both winter and summer extreme weather events that affected Texas ratepayers by increasing the potential for power outages and increasing costs. As the state's residential and small business consumer representative, OPUC has an important role during weather events. The Public Counsel, as an *ex officio* voting member of the ERCOT Board of Directors, is kept apprised of situations involving the reliability of the state's electric grid and makes decisions to better serve the millions of customers relying on ERCOT for electricity.⁵⁸ Similarly, the Public Counsel serves as an *ex officio* non-voting member of the Texas Reliability Entity's (Texas RE) Board of Directors and participates in the many decisions that Texas RE makes in overseeing ERCOT.⁵⁹

During the February winter weather event during which rotating outages were implemented to prevent the state's electric grid from failing, OPUC was engaged in a variety of collaborative efforts to inform customers. Consumer alerts were issued via email, Facebook and Twitter prior to the event as well as during the event to notify consumers about what was happening with their electricity and why. Information was posted on OPUC's website which received a record number of hits during the event. Following the February 2 event, the Public Counsel served on ERCOT's Communications Task Force to implement a more effective way to communicate with those needing to be aware of potential capacity problems. OPUC has been involved in a variety of meetings, workshops, legislative hearings and projects opened as a result of the February event.

In August, record high temperatures and peak electric demand created a need for statewide conservation. The ERCOT communications plan was effective in keeping OPUC and other agencies apprised of grid conditions. OPUC issued numerous consumer alerts through email and social media, asking its residential and small business customers to conserve electricity. In addition, OPUC contacted small business associations asking them to send out conservation alerts to their membership lists to assist in reducing electric demand to avoid rotating outages. Collaboration between ERCOT, OPUC, PUC and various stakeholder groups was successful in reducing demand and avoiding summer outages.

3. Cross-State Air Pollution Rule (CSAPR)

In July 2011, the U.S. Environmental Protection Agency (EPA) issued a final proposed rule known as CSAPR. The initial draft released in 2010 indicated Texas would be under limited reductions, yet the final proposal included Texas for extensive year-round monitoring and reductions in both sulfur dioxide (SO₂) and nitrogen oxide (NO_x). As Texas coal-fired generators began to indicate the impact the proposal and its expedited compliance deadline would have on their ability to comply and remain in operation, OPUC became very concerned about the reduced generation's effect on electric reliability and cost.

⁵⁸ PURA §39.151 (g).

⁵⁹ Texas Reliability Entity Bylaws, Article IV, Board of Directors (Approved Feb. 5, 2010). See: <http://www.texasre.org/CPDL/Bylaws%20for%20Texas%20Reliability%20Entity%20Inc%20%20Approved%20by%20Membership.pdf>.

OPUC worked with TCEQ to get a broad understanding of the timeline for the proposed CSAPR, the reality for generation loss in Texas and the inability to have new generation up and running in time to offset the loss of coal-fired generation resulting from CSAPR. OPUC has worked closely with TCEQ, PUC, ERCOT and affected utilities to analyze, understand and quantify the impacts of CSAPR on Texas customers. The conclusion was that OPUC's constituents could expect a 20 percent or greater increase on future electric bills as a result of reduced capacity because of CSAPR. Accordingly, OPUC chose to submit its own request for reconsideration to the EPA based on the detrimental effects to residential and small business consumers.⁶⁰

On December 30, 2011, the United States Court of Appeals for the District of Columbia Circuit granted requested motions to stay CSAPR and proposed oral arguments be heard in April 2012. OPUC will continue to work with stakeholders, other agencies, and utilities on this issue.

⁶⁰ See Attachment E, OPUC Letter to EPA.

Chapter 4. 2011 Legislative Activities

Pursuant to the PURA Section 13.003(a)(8), OPUC “may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.”

During 2011, OPUC was active as a resource during the legislative session and interim, providing a consumer perspective on the effects different policy proposals may have on residential and small business ratepayers. There were several issues that arose prior to and during the 82nd Regular Legislative Session in which OPUC was asked to participate:

- **Sunset.** The Legislature extended OPUC for 12 years.⁶¹
- **Transmission Line Cases.** Because the Competitive Renewable Energy Zone (CREZ) transmission line cases impacted a large number of landowners across the state and vastly increased the number of people intervening in transmission line proceedings, also known as certificate of convenience and necessity (CCN) cases, constituents expressed a desire to have a neutral party available to advise landowners on procedural aspects of these cases. Senator Duncan and Representative Hilderbran introduced and passed Senate Bill (SB) 855 to provide that authority to OPUC.⁶² OPUC does not typically intervene in CCN cases and does not represent individual landowners. While the agency does not provide legal advice to individual landowners, the agency is well-positioned to act as a neutral party providing procedural information to potential CCN case participants.

Since enactment of SB 855, OPUC has met with all utilities that initiate transmission line applications in Texas to gain a better understanding of their process, to determine which cases they anticipate filing, and to understand how they interact with landowners potentially affected by their transmission line proposals. OPUC is in regular contact with the PUC’s staff who work on CCN cases and stays updated on the progress of cases. OPUC’s website contains information specific to transmission lines, including frequently asked questions, templates for landowners to use in filing to protest or intervene, definitions of different procedures common to transmission line cases, information about how to file documents and where, and links to utility websites, when they are provided, for active cases. OPUC is monitoring the number of inquiries related to CCN cases so it may report back to the Legislature in the *2012 Annual Report*.

- **Periodic Rate Adjustments.** Initially introduced during the 2010 rulemaking at the PUC, the rule was tabled in favor of allowing the Legislature to enact the authority and guidelines for utilities to recover distribution costs on an expedited basis, outside of a traditional rate case. Senator Carona and Representative Thompson introduced and enacted SB 1693, which provides periodic rate adjustments (PRAs) for utilities with limited review until a base rate case. OPUC was asked to actively participate in the evolution of this legislation to ensure residential and small business ratepayers had representation during the legislative process and subsequent rulemaking. OPUC’s participation in the rulemaking and the issues for

⁶¹ PURA, as amended by SB 652, 82nd Regular Legislative Session (2011), codified at §13.002.

⁶² PURA, as amended by SB 855, 82nd Regular Legislative Session (2011), codified at §13.003(a)(9).

legislative consideration raised by the agency is discussed in greater detail in Chapter 2B. Limits on the number and frequency of PRAs, requiring full review of the utility's revenues and expenses after a specified number of adjustments and a limit on inclusion of capital eligible for recovery under the PRA are some of the provisions that were recommended by OPUC and included in the enacted law. The legislature is scheduled to review this law and its efficacy during the 2017 legislative session.

- **Electric Capacity and Cost.** During 2011, the House and Senate standing committees with jurisdiction over the electric market held several hearings related to electric capacity and cost. The first hearings occurred in February 2011 in response to the rotating outages necessitated by severe winter weather and high energy usage. OPUC was asked to testify and provided information on its efforts to notify ratepayers, its involvement with ERCOT's activities and the likely effect high spot energy prices would have on residential ratepayers.

During the early fall, OPUC was asked to testify about the potential impact of the proposed EPA Cross State Air Pollution Rule (CSAPR) on consumers. OPUC was able to provide some perspective based on the tight capacity experienced in August with high temperatures and the amount of generation likely to be taken out of capacity by CSAPR. The impact to ratepayers would likely be substantial across-the-board rate increases due to reduced capacity, cost for companies to comply with the rule, and high demand for allowances allocated to similarly-situated states. At the same time, reduced generation due to plant closings would take an estimated 1,200 MW to 6,000 MW off the grid, making rotating outages commonplace with weather deviations outside the season's norm.

- **Power to Choose Website.** During OPUC's outreach events, consumers voiced questions relating to prices posted on the Power to Choose website, and after agency review of the website, OPUC agrees that price transparency could be improved. The 82nd Legislature considered several proposals to redesign the Power to Choose website as well as proposals for continuing to inform customers of the website's presence on customer bills.

The pricing issues and confusion about fees continues to be raised by retail electric customers at OPUC's outreach events around the state. Information that can impact the customer's electric rate can be found in separate documents that are not contained within the Power to Choose website.

Attachments

- A. OPUC Calculation of Bill Savings
- B. FY 2011 Cases and Projects in Which OPUC Participated
- C. FY 2011 OPUC Appeals Report
- D. OPUC Outreach Events and Educational Materials
- E. OPUC Letter to Environmental Protection Agency (EPA) on Cross-State Air Pollution Rule (CSAPR)

Attachment A**OPUC Calculation of Bill Savings**

The methodology that OPUC uses to determine *current* year bill savings and *future* bill savings was developed by the agency in conjunction with the State Auditor's Office and approved by the Legislative Budget Board (LBB). It is reported as part of OPUC's performance measures.

Current Year Bill Savings are calculated as the difference between a requested amount for a rate adjustment and the amount actually approved multiplied by a percentage representing residential and commercial customers' contribution to the revenues generated by the rates. Because some of the bill savings go to classes other than the residential and commercial classes, OPUC takes only a percentage of the difference between the requested rates and the rates actually received. The percentage is calculated by determining the percentage of revenue that residential and commercial customers provide in Texas to all electric utilities based upon a 3 year rolling average (using Department of Energy publicly available data). Although bill savings typically exist year after year (for example, until the next rate case is filed), OPUC calculates and report only one year's worth of savings. OPUC's current year bill savings for FY 2011 was \$366,997,243.68.

OPUC has an additional performance measure for *future* bill savings that only applies to savings realized in stranded costs cases (unbundling cases prior to entering competition). This calculation captures the future years of stranded costs savings and does not include any savings in the current fiscal year. OPUC had no future bill savings in FY 2011.

Outcome Measure:	Current Year Bill Savings for Residential and Small Commercial Electric Customers (in Millions).
Short Definition:	Bill savings measure the impact on residential and small commercial customer's bills. Different types of proceedings result in rate adjustments on customers' bills such as rate increases/decreases, surcharges, refunds, incentives, mark-ups, transition charges, and fuel charges.
Purpose/Importance:	OPUC will participate in proceedings to ensure the maximum bill savings on residential and small commercial customers' bills. This measure will quantify the impact in the current year for participation in the current year's proceedings on a state-wide basis.
Source/Collection of Data:	OPUC records.
Method of Calculation:	<p>OPUC calculates the bill savings as the difference between a requested amount for a rate adjustment and the amount actually approved, for the current fiscal year. Bill savings should include only residential and small commercial, Industrial and transportation customers will be removed using information from the U.S. Department of Energy.</p> <p>Impact on industrial and transportation customers will be separated out using the most recently available information from the U.S. Department of Energy. The calculation is based on using one of the following: national retail sales of kilowatt hours, state retail sales of kilowatt hours, or state retail revenue earned by all electric companies that sell electricity in Texas. In addition, information from the U.S. Department of Energy should be used to calculate a three year average moving for residential and small commercial market sector to minimize the fluctuation in the market.</p>
Calculation Type:	Cumulative.
New Measure:	No.
Desired Performance:	Higher than target.

Attachment B**FY 2011 Cases and Projects in Which OPUC Participated****Electric Cases**

33536	Issues Severed from Docket No. 32758 (Application of AEP Texas Central Company for a Competitive Transition Charge Pursuant to PUC Subst. R. §25.263(n))
37744	Entergy Texas, Inc. Application for Authority to Change Rates & Reconcile Fuel Costs
37772	SWEPCO Application for Rate Case Expenses Pertaining to PUC Docket No. 37364
37817	Iberdrola Renewables, Inc.'s Appeal & Complaint of ERCOT Decision to Approve PRR 830
38147	SPS Application for Authority to Change Rates & to Reconcile Fuel & Purchased Power Costs for 2008 & 2009
38213	CenterPoint Energy Houston Electric, LLC Application to Defer Energy Efficiency Cost Recovery & For Approval of an Energy Efficiency Cost Recovery Factor
38306	Texas-New Mexico Power Company's Request for Approval of Advanced Metering System (AMS) Deployment & AMS Surcharge
38339	CenterPoint Energy Houston Electric, LLC Application for Authority to Change Rates
38442	Sharyland Utilities Application for Modification of Orders Regarding Rates
38462	SPS Application for Authority to Revise Its Fuel Factors Using the Formulae Approved in Docket No. 36712
38480	TNMP Application for Authority to Change Rates
38669	CenterPoint Energy Houston Electric Compliance Filing for a Standard True-Up of System Restoration Charges Under Schedule SRC
38670	CenterPoint Energy Houston Electric, LLC Compliance Filing for a Standard True-Up of ADFIT Credit Charges Under Rider ADFITC
38840	ERCOT Application for Approval of Post-Go-Live Utilization of the Texas Nodal Market Implementation Surcharge
38849	SPS Application for Authority to Implement a Summer Only Interruptible Credit Option Program & Voluntary Customer Load Program
38880	TNMP Application for Rate Case Expense Severed from PUC Docket No. 38480
38951	Entergy Texas Application for Approval of Competitive Generation Service Tariff (Issues Severed from Docket No. 37744)
38929	Oncor Electric Delivery Company Application for Authority to Change Rates

39127	CenterPoint Energy Houston Electric, LLC Requests for Rate Cases Expenses Severed from Docket No. 38339
39156	Entergy Texas, Inc. Application to Revise Fixed Fuel Factor (Schedule FF) in Compliance With Order in Docket No. 32915
39159	El Paso Electric Company Application to Implement an Interim Fuel Refund
39200	Entergy Texas, Inc. Compliance Filing for Annual True-Up Concerning Schedule TTC (Transition to Competition)
39239	Oncor Electric Delivery Company, LLC Application for Rate Cases Expenses Severed from PUC Docket No. 38929, SOAH Docket No. 473-11-2330
39360	AEP Texas Central Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
39361	AEP Texas North Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
39363	CenterPoint Energy Houston Electric, LLC Application for Approval of an Adjustment to its Energy Efficiency Cost Recovery Factor
39366	Entergy Texas, Inc. Application for Authority to Redetermine Rates for the Energy Efficiency Cost Recovery Factor and Request to Establish a Revised Energy Efficiency Goal and Cost Caps
39376	El Paso Electric Company Application for Approval to Revise Its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Goals and Cost Caps
39411	SPS Application for Approval to Renew Interruptible Credit Option & Saver's Switch Tariffs
39458	CenterPoint Energy Houston Electric Compliance Tariff in Compliance With the Order in Docket No. 38339
39504	Remand of Docket No. 29526 (Application of CenterPoint Energy Houston Electric LLC, Reliant Energy Retail Services, LLC & Texas Genco, LP to Determine Stranded Costs & other True-Up Balances Pursuant to PURA §39.262)
39552	Oncor Electric Delivery Company, LLC Application for Reconciliation of Advanced Metering System (AMS) Surcharge
FERC 10-22-000	Tres Amigas LLC Petition for Disclaimer of Jurisdiction

Electric Projects

35792-P	Rulemaking Relating to Goal for Renewable Energy
37684-P	Rulemaking Proceeding to Amend Rules Relating to Electric Submetering & Master-Metered Apartment Buildings
37909-P	Rulemaking Proceeding to Amend PUC Subst. Rule §25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)
38298-P	Rulemaking Related to Recovery by Electric Utilities of Distribution Costs
38578-P	Energy Efficiency Implementation Project Under Subst. R. §25.181(q)
38674-P	Amendments to Customer Protection Rules Relating to Advanced Meters
38675-P	Amendments to Customer Protection Rules Relating to Prepaid Service
38692-P	Petition for Rulemaking to Enact New Subst. R. §25.243 to Provide for Recovery of Purchased Power Capacity Costs
38708-P	Project to Investigate the Entergy Successor Arrangement
39125-P	Rulemaking & Form Amendments for Electric Transmission Certificate of Convenience & Necessity
39246-P	Rulemaking Proceeding Concerning Recovery of Purchased Power Capacity Costs, Including Amendment of Subst. R §25.238
39465-P	Rulemaking Relating to Periodic Rate Adjustments
39466-P	Project to Develop Filing Package for Periodic Rate Adjustments
39518-P	Rulemaking Related to Implementation of SB 855, Amending Proc. R. 22.52, Relating to Notice in Licensing Proceedings
OPC 02-2	ERCOT Activities
OPC 07-1	OPUC's Project Number for Customer Complaints
OPC 09-3	Electric Customer Outreach & External Communications Activities
OPC 10-5	Texas Reliability Entity (Texas RE) Activities
OPC 11-2	OPUC's Project Number for Participation in Various CCN Proceedings
OPC 11-3	OPUC's Project Number for Military Outreach, Education, and Assistance

Telephone Cases

- 38894 AT&T Texas Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges
- 38899 Windstream Communications Southwest Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 59 Regulated Exchanges
- 38908 GTE Southwest Inc. Application d/b/a Verizon Southwest TXG and TXC, to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges

Telephone Projects

- 36683-P Rulemaking Related to the Revision of PUC Subst. R. §§ 26.417, 26.418 & 26.419 Relating to ETPs, Resale ETPs, & ETCs
- 38231-P Investigation of Issues Relating to Automatic Dial Announcing Devices (ADAD)
- 39585-P Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation, Particularly Senate Bills 980 and 983 and House Bill 3395
- 39586-P Rulemaking Proceeding to Amend Subst. Rules Relating to the Texas High Cost Universal Service Plan, and Subst. Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan
- 39717-P PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VOIP) Services and Texas Universal Service Fund (TUSF)
- FCC 08-4 Identical Support/High-Cost Universal Service Support & Federal State Joint Board on Universal Service
- FCC 08-22 Joint Board Comprehensive Reform/High-Cost Universal Service Support & Federal State Joint Board on Universal Service
- FCC 08-262 FCC Order on Remand & Report & Order & Further Notice of Proposed Rulemaking Requesting Comments on Three Proposals to Reform Intercarrier Compensation & High-Cost Universal Service Support
- FCC 09-68 FCC Matter of Consumer Information and Disclosure; Truth-in-Billing; and Billing Format IP-Enabled Services
- FCC GN 09-191 FCC Matter of Preserving the Open Internet and Broadband Industry Practices

Attachment C

FY 2011 APPEALS REPORT

For FY 2011, OPUC participated in 7 appeals. The procedural history and dispositions related to each of OPUC's appeals, by court, are described later in this Attachment.

Appellate Process in the Administrative Law Context

Unlike most civil cases, the appellate process for most cases arising from a decision by the PUC begins with judicial review in the Travis County District Court before going on to the intermediate Court of Appeals or the state's Supreme Court. Direct Appeal and Petition for Writ of Mandamus may allow parties to "skip" one or more appellate levels but such cases are in the minority. The district court serves a valuable function in the administrative appellate process, because it is at this level that the multiple issues on appeal are refined before continuing in the process. A funneling effect also occurs in that many cases are resolved in the district court in such a way that parties decide to cease pursuit of the appeal at a higher level. More administrative law appeals are heard at the district court than the Texas Court of Appeals and Texas Supreme Court combined.

During FY 2011, OPUC was involved in pending appeals related to seven PUC decisions. Of those appeals, three have progressed to the Texas Supreme Court level while two others, including one direct appeal of a competition rule, have progressed as far as the Court of Appeals. The remaining two have not progressed past judicial review in the Travis County District Courts by fiscal year's end. Five of the seven appeals remained pending at fiscal year's end, one at the Texas Supreme Court, two in the Court of Appeals, and two in the Travis County District Court.⁶³

Appellate Statistics

Determining whether one is successful at the intermediate and high court level requires consideration of many factors. Multiple issues may be presented to the appellate court for review, and parties may find themselves simultaneously defending agency action on some issues and appealing agency actions on other issues. However, the statistics regarding appeals filed in Texas demonstrate that it is generally difficult to overturn decisions. On the Court of Appeals level, only 9.4 percent of the 11,936 cases disposed of in FY 2011 resulted in either a reversal or a mixed disposition. The remainder of cases on appeal at the intermediate level either had decisions which affirmed the decision from the lower court or were dismissed or otherwise disposed. Likewise, only a small number of cases actually result in reversals or mixed dispositions at the Supreme Court level. Before reviewing a case on its merits, the Supreme Court first decides whether it will even hear the case. The large majority of petitions for review are denied. Initial review was granted in just 101 of the 778 petitions disposed of by the

⁶³ PURA § 13.063(a)(4) requires the OPUC Annual Report to include the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

Supreme Court in FY 2011. In FY 2011, the Court disposed of 118 causes in which initial review had been granted, with 11.86 percent of those dispositions affirming the court below.⁶⁴

Parties' reasons for appealing are not always simply to have the underlying agency decision overturned. Parties may appeal for strategic reasons such as to counterbalance an opponent's appeal of the same decision or to preserve rights while other cases are on appeal. Parties also file appeals for reasons related to settlement negotiations, or to bring issues to light so that they can be more expeditiously addressed in another forum. Because of the complexities that surround the decision to appeal, measuring prevailing dispositions do not always tell the entire story.

⁶⁴ *Office of Court Administration's Annual Statistical Report for the Texas Judiciary* (FY 2011). FY 2011 information available when OPUC's Annual Report was prepared was found at <http://www.courts.state.tx.us/pubs/AR2011/toc.htm>.

**OFFICE OF PUBLIC UTILITY COUNSEL
FY 2011 APPEALS REPORT**

PUC NUMBER	SUBJECT	COURT CAUSE NUMBERS	DISPOSITION	STATUS AS OF 8/31/10
29526	True-Up- CenterPoint	GN5-00439+; GV5-00066* GV5-00297* COA: 03-05-00557 ~ SCT: 08-0421 05-0043‡	Dist. Ct.: Mixed Disposition COA: Mixed Disposition SCT: Mixed Disposition ~ SCT: Prevail‡	Closed
31056	True-Up- AEP TCC	D-1-GN-06-002081* D-1-GV-06-000827+ COA: 03-07-00196 SCT: 08-0634	Dist. Ct.: Not Prevail COA: Mixed Disposition SCT: Not Prevail	Closed
32758	Competition Transition Charge – AEP TCC	D-1-GN-07-001153		Pending at Dist. Ct.
35038	TNMP Compliance Tariff	D-1-GN-09-000071 COA: 03-10-00526 SCT: 11-0449	Dist. Ct.: Not Prevail COA: Prevail	Pending at SCT
35717	Rate Case – Oncor	D-1-GN-10-000448* COA: 03-11-00072	Dist. Ct.: Not Prevail	Pending at COA
37263	Energy Efficiency Rule Amendment	COA: 03-10-00633#		Pending at COA
38213	CenterPoint Energy Efficiency Cost Recovery Factor Adjustment	D-1-GN-11-00251		

KEY:

+ denotes consolidated cause number

* denotes cause originated by OPUC

‡ denotes a separate appellate track, such as a mandamus

denotes a direct appeal pursuant to PURA § 39.001

TERMS:**COA** The Third Court of Appeals, Austin, Texas**SCT** The Supreme Court of Texas

Attachment D

OPUC Outreach Events and Educational Materials

Calendar Year 2011		
01/23/11	Austin, TX	Smart Energy Summit
02/17/11	Round Rock, TX	Community Outreach
02/25/11	Fort Hood, TX	Military Community Outreach
03/10/10	Austin, TX	Corsicana Day, Texas Capitol
03/25/11	Round Rock, TX	Community Outreach
04/19/11	Hillsboro, TX	Community Outreach
05/12/11	Waxahachie, TX	Community Outreach
06/09/11	Mexia, TX	Community Outreach
07/05/11	Temple, TX	Community Outreach
07/12/11	Taylor, TX	Community Outreach
07/27/11	Fort Hood, TX	Military Community Outreach
08/10/11	Baytown, TX	Community Outreach
08/12/11	Austin, TX	Public Utility Law Seminar
08/24/11	Fort Hood, TX	Military Community Outreach (CSC)
09/06/11	Pearland, TX	Community Outreach
09/08/11	Fort Hood, TX	Military Community Outreach (3-82 FA Family Night)
09/28/11	Fort Hood, TX	Military Community Outreach (115BSB, 1BCT, 1CD Battalion FRG Meeting)
09/29/11	Fort Hood, TX	Military Community Outreach (FRG Steering Committee)
10/27/11	El Paso, TX	Border Energy Forum
11/3/11	Dallas, TX	Texas Energy Professionals Association
11/09/11	San Angelo, TX	OPUC Annual Meeting
11/12/11	St. Louis, MO	National Association of State Utility Consumer Advocates & National Association of Regulatory Utility Commissioners

Fall
2011Newsletter of the
Texas Office of
Public Utility
Counsel for Fort
Hood

OPUC news

**Did You Know?**

In the CENTEX -area, you can shop for retail electric plans that range from variable rate plans starting at 4.5¢ and fixed rate plans starting at 7.5¢. For an average home using 1,000 kWh per month, that's a difference of \$45 per month v. \$75 per month, or a potential savings of \$30 for a homeowner or renter.

Have a utility complaint
or question?

Call OPUC toll-free at:
1-877-782-8477

or e-mail us at:
customer@opc.state.tx.us



Find us on
Facebook

**this issue**

From the Public Counsel P.1
CENTEX, did you know? P. 2
Tips for Shopping P. 2
OPUC Outreach P. 2
Deployment/Change of
Station P. 2
TDU/REP Assistance P. 2
Low-Income Assistance P.2

From the Public Counsel

Greetings Ft. Hood soldiers, civilian employees, retirees and families! Did you know that in certain areas of Texas, you can shop for electricity plans and lower your monthly bill? Much like you shop for a cell phone plan or car insurance, you may be able to do the same for your home's energy usage. You can select from over 100 retail electric providers, or REPs, who are certified to serve in Texas and offer more than 300 electricity rate plans. If you're a homeowner or renter, the choice to save is yours!

To determine if you live in an electric choice area, go to www.PowertoChoose.org (or call toll-free 1-866-797-4839). When you go to the website, select "Go Directly to Offers," and enter your current zip code. (Note: If "No Offers Found" appears, then it is likely that you live in an area with electric service provided by either the base, an electric cooperative, a municipally-owned utility, or an investor-owned utility that has not opened up to electric choice at this time.)

If you do live in an electric choice area, you will see a lengthy list of REPs with the following information: **1.** REPs average price per kilowatt hour (kWh, a unit of measurement for your electric usage that appears on your bill) based on a home's average usage of 1,000 kWh per month; **2.** the rate type (variable, indexed or fixed); **3.** the renewable energy content percentage of the electric product; and **4.** the length of the contract (ranging from 0 months all the way up to 36 months).

Should you switch REPs before your contract expires, then you may be subject to an early termination fee, so definitely know that date before you shop & switch. Do your research, shop, and save!

Sheri Givens, Public Counsel

OPUC News – Fort Hood

CENTEX, did you know?

Retail electric rates prior to electric restructuring in 2002 were about ten cents per kilowatt hour. Now, you can get a wide range of rates and products starting as low as a nickel. It doesn't matter which company sends your bill - you will continue to have the same reliable electric service from your local transmission company. Below is a sample of today's market prices for Killeen:

Rate Type	Lowest	Highest
Regulated Rate (12/31/01)	9.7 ¢	9.7 ¢
Variable Product (09/26/11)	4.5¢	15.1¢
Fixed Term Product (09/26/11)	7.5¢	12.9¢

Tips for Shopping

- The lowest rate shown is often a variable rate, so it may be good for the first billing cycle or month only.
- REPS cannot charge a switching fee – don't sign up with a REP that charges one.
- To review Terms of Service, Electricity Facts Labels & Special Terms, you will be directed to the REP's website & will leave Power to Choose website.
- Some apartments have preferred REPs, but you are not required to use that REP & can choose to shop, picking the best plan for you.

OPUC Outreach

Need A Speaker? OPUC travels the state, reaching out to inform Texas electric & telephone customers about issues affecting them - energy assistance, weatherization, retail electric choice, smart meters & savings tips.

If you represent an organization & would like OPUC to speak to your group, contact our office at 1-877-839-0363 or send an e-mail to customer@opc.state.tx.us with your organization's name, phone number, and person we may contact with questions.

Military Deployment/Change of Station

Are you deploying or changing posts? If so, and you are moving out of your home or apartment, you are not subject to an early termination fee, regardless of the contract term that you have with your REP. Know before you go. Please contact OPUC if you experience problems with termination or transfer of your electric service when preparing to deploy.

Transmission & Distribution Utility (TDU) Assistance

Regardless of the REP you select, Oncor is the TDU that delivers power to approximately 3 million customers of REPs in Texas and maintains and upgrades the wires and poles around areas surrounding Fort Hood. If interested in Oncor's home energy efficiency programs - call Oncor at 1-866-728-3674, visit www.TakeALoadOffTexas.com, or email ecustinfo@oncor.com.

Oncor also provides 24/7 outage information and maps – visit www.oncor.com/community/outages. To report outages, call 1-888-313-4747.

REP Assistance

REPs are required to provide certain services to customers. You or someone you know may be eligible for critical care/chronic care status, balanced or levelized billing, a deferred payment plan or a waiver of the electric utility deposit if you are over the age of 65. For more information, contact your REP.

Low-Income Assistance

Some low-income households may qualify for payment & weatherization assistance programs. The LITE-UP Program provides a discount on summer electric bills, & the Lifeline Program provides a discount on telephone service – for both, call 1-866-454-8387. The Link-Up Program provides a discount on telephone installation – visit www.lifelinesupport.org. The Texas Department of Housing & Community Affairs offers two programs, the Comprehensive Energy Assistance Program & the Low-Income Weatherization Program – for Bell County, contact Hill Country Community Action Association, 325-372-5167. Call 2-1-1 for local assistance.

Texas Office of Public Utility Counsel
1701 N Congress Avenue (William B. Travis Office Building)
Suite 9-180
Austin, Texas 78701
Phone: 512-936-7500 or 877-839-0363 • Fax: 512-936-7525
www.opc.state.tx.us

RETAIL ELECTRIC PROVIDER (REP) COMPARISON SHEET

	Current REP	Product A	Product B	Product C
1. Name of Retail Electric Provider (REP)				
2. Your typical monthly usage (kWh)				
3. Rate per kWh (current or proposed)				
4. Bill amount (kWh usage x rate)				
5. Rate type (fixed, variable, indexed)				
6. Contract term, if applicable? (i.e. 3 month, 6 month, 12 month)				
7. If rate is fixed or indexed, is there an early termination fee? Amount?				
8. Deposit required? Amount?				
9. Minimum usage fee? Amount?				
a. If yes, what kWh threshold triggers it? (i.e. 500, 650, 800, 1000)				
10. Score on REP Complaint Scorecard? REP Complaints statistics?				
9. Other important information?				

Questions to ask before Switching Retail Electric Providers (REPs)

1. Do I have a contract with my current REP? If so, what is the contract expiration date, and will I have to pay an early termination fee (ETF) or cancellation fee?
2. What will I pay per kilowatt hour (kWh) of electricity based on 1,000 kWh of average household monthly usage?
3. Does this kWh rate include everything, or will I pay a monthly charge if I use more/less electricity during a billing period (or, minimum usage fee), transmission & distribution utility (TDU) charges, fuel charges or other monthly recurring fees?
4. Will I have to pay a deposit if I select this REP, and if so, how much?
5. Will I have a contract with the new REP, and if so, for how long? Is there a penalty, ETF, if I break the contract?

How to Shop for a REP

1. Go to www.PowertoChoose.org or call toll-free, 1-866-797-4839.
2. On the website, select "**Go Directly to Offers**," and enter your zip code.
3. When you enter your zip code, you will see "**Available Offers**" for your area.
4. In the right hand column, "**List of Electric Offers**," you will see all available REPs offering service in your area and a variety of products and plans for you to choose. Generally, the REPs are listed from lowest price to highest. Variable plans are often lowest and listed first, but the rate may change after the first month.
5. In the left hand column, "**Search Criteria**," you can narrow your search by selecting from one of several drop-down menus: Rate Type; Renewable Content; and REP Company. You may also enter a range of prices you are willing to pay for electricity in the "Price (cents per kWh)" area. You have the option to enter in preferred "Contract Term (months)" ranging from 0 months up to 36 months, or anything in between. Click the "Submit" button when you have finalized your search.
6. Review the "**Terms of Service**," "**Electricity Facts Label**," and any applicable "**Special Terms**" for each REP you search.
7. Review Customer Complaint Statistics through the "**REP Complaint Scorecard**" and "**REP Complaint Summary**."
8. When you have decided upon a new REP, click on "**Sign Up**" to be taken to the REP's website to sign-up for their product.

Definitions

Contract Term – the length of the contract you choose to sign up for with your REP. Contract term lengths include month-to-month or monthly ranges from three months to three years. Contracts with three month terms, or longer, might include an early termination fee if you cancel before the contract end date.

Cramming – the illegal adding of charges to a customer's electric bill without the customer's approval.

Early Termination/Cancellation Fee (ETF) – a charge by some REPs, up to \$250, to customers ending their electric contract early.

Electric Choice/Competitive Electric Market – beginning in Texas in 2002, allows customers in certain areas to choose their REP.

Electric Cooperative – a customer-owned electric utility that distributes electricity to its members, having the option to "opt-in" to the electric choice market.

Electricity Facts Label (EFL) – the "nutrition label" for your REP product or plan providing the customer with standardized information on the REP's company, contract terms, pricing, fees, and renewable energy percentage, allowing customers to compare between different REPs and their various offers.

Kilowatt Hour (kWh) – unit of measurement, appearing on customers' bills, that shows how much power is expended during one hour of time.

Minimum Usage Fee – a charge by some REPs, up to \$12.95/month, to consumers using less than 500, 800 or 1,000 kWh per month.

Municipally-Owned Utility – a non-profit utility owned and operated by the city it serves, having the option to "opt-in" to the electric choice market.

Office of Public Utility Counsel (OPUC) – state agency that represents residential and small commercial ratepayers of electric and telephone utilities.

PowertoChoose (PTC) website – the official Electric Choice website operated by the PUC where you can shop for REPs.

Public Utility Commission (PUC) – state agency charged with regulating electric and telephone utilities.

Retail Electric Provider (REP) – the electricity billing company, in an electric choice area, that sells electricity to its customers, PUC-certified to operate in Texas.

REP Complaint Scorecard – PUC-compiled customer complaint information converted into graphical scoring system.

REP Complaint Summary – PUC summary of total number and types of complaints received by customers for last 6 months.

Rate Types – three include: fixed – rate generally stays the same through the contract term; variable – rate may go up/down each month according to the pricing method chosen by the REP; indexed – rate is tied to a specific pricing formula disclosed by the REP.

Renewable Energy Content – electricity purchased by the REP from renewable sources including wind, water, biomass or solar.

Terms of Service – the contract between the REP and the customer outlining fees, length of contract service, and other information.

TDU Service Area – the transmission and distribution utility (TDU) that transmits and delivers electricity to a customer's home, repairs and maintains the wires and poles, and restores electric power outages.

Sign Up – the option listed on the PTC website for a customer to exit PTC and go to the REP's website to sign-up for service.

Slamming – the illegal switching of electric service by a REP without a customer's approval.

Special Terms – terms advertised by certain REPs relating to a specific product which may include airline miles, gift cards, etc.

Your Rights as a Customer (YRAC) – a document required of REPs to be given to customers informing them of rights, including service cancellation, billing issues, disconnection/termination and disputes.

Brought to you by the: Texas Office of Public Utility Counsel; Toll-Free: 877-839-0363; Website: www.opc.state.tx.us

Attachment E

**OPUC Letter to Environmental Protection Agency (EPA) on
Cross-State Air Pollution Rule (CSAPR)**



Office of Public Utility Counsel

P.O. Box 12397
Austin, Texas 78711-2397
Tel: (512) 936-7500 Fax (512) 936-7525
Toll Free: (877) 839-0363

Sheri Givens
Public Counsel

September 9, 2011

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Room 3000, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Gina McCarthy, Assistant Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation
Ariel Rios Building, Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Request for Reconsideration and Stay; Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (Docket No. EPA-HQ-OAR-2009-0491)

Administrator Jackson and Assistant Administrator McCarthy:

The Texas Office of Public Utility Counsel (OPUC) is a state agency that specifically represents and advocates for Texas consumers of electricity in both the ERCOT and non-ERCOT regions of the State. As Public Counsel, I am also a member of the ERCOT and Texas RE Board of Directors. I am writing you to express my office's concerns relating to the Cross-State Air Pollution Rule (CSAPR) from a Texas residential and small business consumer perspective. Since the publication of the CSAPR in July, I have had multiple conversations with generators, ERCOT, and other affected state agencies, including the Public Utility Commission of Texas, the Texas Commission on Environmental Quality, and the Texas Office of the Attorney General. Pursuant to my discussions with these various groups, I am most alarmed by two issues – reliability and costs – and their potential impact on my office's constituency.

1701 North Congress Avenue, Suite 9-180 • Austin, Texas 78701

Reconsideration of Final Federal Implementation Plans and Interstate Transport Rule
September 9, 2011
Page 2

Reliability

ERCOT ensures the reliable flow of electricity for 23 million Texas customers, representing 85% of the state's electric load. Texas residential customer load can range from 20% of the overall ERCOT load during off-peak conditions to over 50% during summer peaks, and small commercial customer load can range from 34% on a moderate day to 25% on a peak day.¹ Capacity available at peak is 73,175 MW, and the minimum reserve margin required for reliability is 13.75%.²

Texas has experienced one of its record hottest summers this year. During this summer, ERCOT experienced record peak demand, with new records set over three consecutive days at the beginning of August,³ and issued Energy Emergency Alerts notifying consumers of the need to conserve, due to the tightness of the reserve margin, to prevent statewide rotating outages. Rotating outages were avoided only by the curtailing of large commercial and industrial load through voluntary agreements to be curtailed during an emergency and the aggressive conservation efforts by consumers and businesses to reduce usage of electricity, especially between the hours of 3:00pm to 7:00 p.m.⁴ On the hottest day with the highest demand, ERCOT fell to a mere 3.8% reserve margin.⁵

In February of this year, ERCOT experienced rotating outages on a single day lasting approximately eight hours due to generation inadequacy caused by an unexpected loss of 8,000 MW of generation during a winter weather event,⁶ and at least one death was attributed to those outages.⁷ We have been fortunate, to date, not to have to enforce rotating outages this summer.

Prior to the August peak days, the ERCOT CEO issued a statement relaying the concern that many coal plants in ERCOT will be forced to limit or shut down operations in order to maintain compliance with CSAPR.⁸ Such limitations and shut downs could lead to inadequate operating reserve margins with insufficient time to retrofit existing generation or build new generation to meet the state's electricity needs. CEO Doggett also added that it is unclear whether ERCOT operations has adequate tools to maintain long-term reliability in the face of losing large amounts of base load in such a short period of time.

On September 1, ERCOT issued a report, "Impacts of the Cross-State Air Pollution Rule on the ERCOT System" regarding the dangerous impacts to the reliability of the Texas grid due to the short timeline associated with CSAPR compliance.⁹ The report presents an overview of the significant operational challenges for the state's electric grid should the rule be implemented as proposed and provides for three scenarios of potential impacts from CSAPR. Operational challenges to affected resource owners include the limited supply of available Powder River Basin coal coupled with increased demand, the limited number of allowances available to Texas units, the potential damage to units based on continuously-needed maintenance or de-rating, and the potential reduced capacity of generation units during retrofitting.¹⁰ Through dialogue with resource owners throughout Texas, ERCOT found that, due to the risks associated with the various compliance options under CSAPR, it is unlikely that all of the resource owners' plans will function as designed.¹¹ It was also clear to ERCOT that the resource owners' plans are "still preliminary and based on assumptions regarding technology effectiveness, fuel markets, impacts

Reconsideration of Final Federal Implementation Plans and Interstate Transport Rule
September 9, 2011
Page 3

on altered unit operations on maintenance requirements, and the cost-effectiveness of modifying and operating units to comply with CSAPR.”¹² ERCOT concluded that the implementation deadline of the rule does not provide ERCOT and its resource owners with “a meaningful window for taking steps to avoid the loss of thousands of megawatts of capacity, and the attendant risks of outages for Texas power users.”¹³ By delaying the CSAPR implementation deadline, options for maintaining system reliability would be expanded.¹⁴

One generator in ERCOT, Luminant, a subsidiary of Energy Future Holdings (EFH), or Luminant/EFH, has stated the impact of the CSAPR rule on its generation fleet will be the curtailment of operations and possible shutdown of units in a matter of months to meet Texas’ required emissions budgets.¹⁵ Unfortunately, due to the lack of notice relating to the EPA’s inclusion of Texas in the CSAPR, Luminant has not had an opportunity to fully review and comment on the rule’s impact to electric reliability and prices.¹⁶ However, one thing is certain, electric reliability will be put at risk and reserve margins will be dangerously decreased without a stay of this rule.¹⁷ In the recent 8-K filing of Luminant’s parent company, EFH, CSAPR compliance options identified include reducing operating levels of lignite/coal-fueled generation facilities, conducting seasonal or temporary shut-downs, installing and operating dry sorbent injection systems in conjunction with reducing operations and mothballing certain legacy lignite/coal-fueled generation and related mining operations.¹⁸

One non-ERCOT utility, located within the Texas Panhandle in the Southwest Power Pool, Southwest Public Service Company (SPS), a subsidiary of Xcel Energy, Inc. (Xcel), or SPS/Xcel, has stated that its affected Texas units, two-coal fired power plants (Harrington and Tolk) consisting of five units (or 2,146 MW of capacity), will be most dramatically impacted by CSAPR.¹⁹ SPS/Xcel continues to analyze the rule’s impacts and intends to supplement its data in the coming weeks.²⁰ Because of power-import and transmission constraints on SPS/Xcel, the company does not believe it will be able to purchase sufficient power to keep the lights on in its service territory should it have to curtail its coal-fired generation to comply with CSAPR.²¹

Without adequate generation capacity available to ensure a reliable grid, Texas electricity consumers may face rotating outages on a continuing basis which will potentially affect the health, safety and welfare of all Texans.

Costs

Texas electric customers in the ERCOT region have access to electricity prices as low as 4.5 cents/kWh for variable rate plans and 8 cents/kWh for fixed rate plans. With the proposed expeditious deadline of the CSAPR, resource owners and market analysts estimate affected Texas generators will face substantial costs, and acknowledge those costs will be pushed down to Texas consumers through the electric rates they pay.

SPS/Xcel estimates that the “system flip,” from coal-fired base load to natural-gas fired base load required by CSAPR compliance, may cost upwards of \$250 million in additional costs in 2012. Costs may include “added costs from switching from coal to natural gas, additional costs for purchase power, higher transmission costs, higher costs for natural gas due to increased

Reconsideration of Final Federal Implementation Plans and Interstate Transport Rule
September 9, 2011
Page 4

demand, and potential liquidated damages on coal rail contracts," much exceeding the EPA's estimated \$500 per ton threshold by as much as 20 times that amount.²² On September 2, SPS/Xcel did a media education session where it shared that the approximate \$250 million increase in fuel costs for re-dispatching its system would translate into an increase of approximately 12% to residential consumer bills, or for an average family, \$8 more per month on their electric bill starting as early as March or April of 2012.²³

Luminant/EFH compliance estimates for coal-fired generation have ranged between \$1.2 and \$2 billion.²⁴ Generation sources will need to make substantial compliance investments expeditiously in the coming months, and these investments may not be reversible if the Texas emission limits are revised or if Texas is later excluded.²⁵ The basic theory of supply and demand portends that the price to purchase necessary control equipment and appropriate coal types during high demand will cause higher-than-market value prices. Such increased costs will likely be passed on through wholesale electric rates which ultimately will be passed through retail electric rates paid by Texas consumers.

Though EPA acknowledges average retail electricity prices could increase by 1.7 % in the U.S., NERA Economic Consulting proposes average retail electric prices could increase by 12% nationally, and as much as 24% regionally.²⁶ For the ERCOT region, prior to inclusion of Texas in CSAPR emission reduction requirements, NERA estimated retail electricity prices could change as much as 12%, but it is clear, those estimates will be much higher with the recent addition of Texas. ERCOT CEO Doggett predicted to Senator John Cornyn these changes could increase electricity costs by 10%.²⁷

For these, and numerous other reasons put forth by other interested Texas parties, OPUC urges EPA to reconsider this rule and the impact it will have on reliability and the harm it could pose to Texas electric consumers. At the very least, OPUC encourages EPA to provide Texas resource owners adequate time to comply with these new regulations to mitigate the impact to Texas ratepayers so they are not left paying higher costs associated with the accelerated timeline.

Regards,



Sheri Sanders Givens
Public Counsel
Office of Public Utility Counsel

cc: The Honorable Rick Perry
The Honorable David Dewhurst
The Honorable Joe Straus
The Honorable Members of the Texas Legislature
The Honorable Members of the Texas Congressional Delegation
The Honorable Bryan W. Shaw, TCEQ
The Honorable Donna L. Nelson, PUCT

Reconsideration of Final Federal Implementation Plans and Interstate Transport Rule
September 9, 2011
Page 5

- ¹ ERCOT, *ERCOT Demand Response Overview & Status Report*, p. 7 (Aug. 30, 2011). See http://www.ercot.com/content/meetings/dswg/keydocs/2011/0830/3_ERCOT_presentation_workshop_083011.pdf.
- ² ERCOT, ERCOT Quick Facts (July 2011). See <http://www.ercot.com/news/presentations/2011/ERCOT%20Quick%20Facts%20-%20July%202011.pdf>.
- ³ New peak demand records were set on Aug. 1 (66,867 MW), Aug. 2 (67,929 MW) and Aug. 3 (68,294 MW). See ERCOT, *CEO Update*, p. 5 (Aug. 16, 2011) (CEO Update). See http://www.ercot.com/content/meetings/board/keydocs/2011/0816/Item_03_-_CEO_Update.pdf.
- ⁴ ERCOT, ERCOT CEO Statement, *Thank you for conserving electricity* (Aug. 16, 2011). See http://www.ercot.com/news/press_releases/show/425.
- ⁵ CEO Update at 8.
- ⁶ ERCOT, Presentation to Joint Senate Committees, *February 2, 2011 Grid Emergency Events*, pp. 6, 8 (Feb. 15, 2011). See http://www.ercot.com/content/news/presentations/2011/Senate_EEA_Presentationfinaltg.pdf.
- ⁷ Christine Dobbyn, Houston-KTRK, *Family blames brother's death on rotating outages* (Feb. 2, 2011). See <http://abclocal.go.com/ktrk/story?section=news/local&id=7936394>.
- ⁸ ERCOT, *ERCOT CEO Statement Regarding EPA Cross-State Rule* (July 19, 2011). See http://www.ercot.com/news/press_releases/show/354.
- ⁹ ERCOT, *Impacts of Cross-State Air Pollution Rule on the ERCOT System* (Sept. 1, 2011). See http://www.ercot.com/content/news/presentations/2011/ERCOT_CSAPR_Study.pdf.
- ¹⁰ Id. at 3, 6.
- ¹¹ Id. at 4.
- ¹² Id. at 5-6.
- ¹³ Id. at 7.
- ¹⁴ Id.
- ¹⁵ See Luminant/EFH's *Request for Partial Reconsideration and Stay of EPA's Final Rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States" Signed July 6, 2011 (Docket No. EPA-HQ-OAR-2009-0491)*, p. 33 (Aug. 5, 2011) (Luminant/EFH Petition).
- ¹⁶ Id. at 15.
- ¹⁷ Id. at 34.
- ¹⁸ EFH, *Form 8-K filing with the U.S. Securities and Exchange Commission* (July 13, 2011); See PUCT Project No. 20310, *Electric Utilities Securities and Exchange Commission (SEC) Form 8-K Pursuant to Subst. R. 25.73(c)*, Item No. 888, Energy Future Holding Corp. Form 8-K (July 15, 2011). See http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/20310_888_702616.PDF.
- ¹⁹ See SPS/Xcel's *Initial Petition for Reconsideration and Request for Stay of the Cross-State Air Pollution Rule*, p. 2 (Aug. 23, 2011) (SPS/Xcel Petition).
- ²⁰ Id. at 3.
- ²¹ Id. at 9.
- ²² SPS/Xcel Petition at 13.
- ²³ See <http://www.newschannel10.com/story/15387052/get-ready-for-an-electric-bill-price-hike>. See also <http://amarillo.com/news/2011-09-02/rule-could-lead-xcel-boost-prices#.TmbVSY6Vmul>.
- ²⁴ See <http://www.ft.com/cms/s/0/ba247c5e-ce8b-11e0-b755-00144feabdc0.html#axzz1XERTP9sS>.
- ²⁵ Luminant/EFH Petition at 33.
- ²⁶ See Federal Register 48346-48347 (Aug. 8, 2011); NERA Economic Consulting, *Proposed CATR + MACT Presentation* (May 2011). See http://www.americaspower.org/NERA_CATR_MACT_29.pdf.
- ²⁷ Elizabeth Souder, *ERCOT Chief Executive Predicts Coal Pollution Limits Could Boost Electricity Bills 10%*, See <http://www.dallasnews.com/business/energy/20110902-ercot-chief-executive-predicts-coal>. (September 2, 2011)